

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANCIS J. KARLE and U.S. POSTAL SERVICE,  
POST OFFICE, Erie, PA

*Docket No. 97-2873; Submitted on the Record;  
Issued August 12, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that his bilateral shoulder and elbow conditions were caused by factors of his federal employment.

On March 6, 1997 appellant, then a 55-year-old letter carrier, filed a claim alleging that his bilateral shoulder and elbow conditions were caused or aggravated by his federal employment. Appellant stated that some 30 years of repetitive motion while casing and delivering mail caused pain in both of his shoulders and elbows. Appellant noted that he first became aware of his disease or illness, and first realized that his disease or illness was caused or aggravated by his federal employment on January 26, 1993. He then indicated that he first reported his condition to his supervisor on February 12, 1997 and was last exposed to the conditions alleged to have caused his condition on March 8, 1997. The record shows that appellant lost no time from work due to his condition, but indicated that the employing establishment lowered one of his work shelves for sorting letters, from a six-shelf case to a five-shelf case in order to accommodate appellant's shoulder discomfort.

In support of this claim, appellant submitted various medical reports from Dr. Mary Beth Cermak, a Board-certified orthopedic surgeon dated February 5 and December 12, 1996 and February 13, 1997. In the February 5, 1996 report, Dr. Cermak stated:

“[O]n December 26, 1995 [appellant] was trying to push ... moveable basketball hoop back up and he thought he had it back up all the way but came back down on him and he reached up and actually felt a twinge in the lateral aspect of his arm when he prevented it from falling all the way down. Since that time, he has been performing his regular duties and activities of daily living but he complains of pain and discomfort along the lateral aspect of his arm. [Appellant] said it is better than it was when it first happened but it is not going away and is starting to concern him. He denies any history of numbness or tingling or any other injuries.”

Dr. Cermak noted that appellant's examination showed that he was neurologically and vascularly intact; that appellant had full cervical, shoulder, wrist and finger range of motion without pain or deformity; that he was point tender along his extensor carpi radialis brevis and his pronator; and that resistive testing of these muscles reconfirm the pain with appellant's elbow in extension and in flexion, they were not as painful. She then noted that appellant's shoulder did have some tenderness over both of his anterior biceps tendons and that appellant may be developing an early rotator cuff tendinitis. Dr. Cermak indicated that her impression was that appellant had a slowly resolving extensor tendinitis/lateral epicondylitis on the right and recommended patience as far as appellant's problem was concerned, some anti-inflammatory medication as needed and a stretching program. Appellant was placed on anti-inflammatory medication as needed and a stretching program. Dr. Cermak went on to inform appellant that it could take as long as three to six months for his condition to resolve, but as long as it was continuing to get better he should not worry.

In the December 12, 1996 report, (approximately 10 months later) Dr. Cermak noted that appellant continued to complain of problems revolving around both shoulders. She indicated that appellant has had difficulty with overhead activities and external rotation-type activities; that anytime appellant tries to do anything both shoulders caused him irritation and discomfort down into both elbows on the medial and lateral borders. Dr. Cermak also indicated that appellant was complaining of discomfort behind both knees and felt that he was not as strong as he used to be. Appellant indicated that he was having trouble holding his 30-pound granddaughter and felt as if he was going to drop her because of the pressure on his shoulders. Dr. Cermak went on to state that on examination:

“[Appellant] [is] tender over both of his anterior biceps tendons. He has positive impingement signs bilaterally and you can hear a little bit of crepitance. His shoulder range of motion shows limited internal rotation and limited external rotation bilaterally. He [is] able to fully abduct and forward flex, but it does cause him discomfort at the ends of motion.”

\* \* \*

“X-ray exam[ination] of both shoulders shows, especially on the right, an impingement-type of spur developing and a little bit of AC [acromioclavicular] joint arthritis. The left one does not look as bad.”

Dr. Cermak then opined “that based on the nature of [appellant's] job, that this impingement is probably work related, as [appellant] described doing a lot of outstretched arm maneuvers.”

Thereafter, in the February 13, 1997 report, Dr. Cermak indicated that appellant was doing much better as far as his impingement syndrome was concerned; that appellant now had full free unrestricted range of motion in abduction, forward flexion, external and internal rotation. Dr. Cermak indicated that appellant's examination was excellent at this point in time but still had a positive impingement sign bilaterally. Dr. Cermak noted that appellant had lowered one of his shelves at work and felt that since he did not have to overhead lift as much, the pain he was experiencing had gone down as well.

In a letter dated April 13, 1997, appellant explained the duties of his job as casing and delivering mail using his right hand, arm, elbow and shoulder on a repetitive basis for 30 years. He explained that he held mail in his left hand while keeping his arm, elbow and shoulder in the same position while casing and delivering this mail with his right arm. Appellant then noted that he had seen a Dr. Layden, an unidentifiable physician,<sup>1</sup> on January 26, 1993 in regards to appellant's condition and was told to continue with ibuprofen or Tylenol after he had explained the duties of his job to Dr. Layden.

In a letter dated May 22, 1997, the Office of Workers' Compensation Programs advised appellant that the evidence of record was not sufficient for the Office to determine whether he was eligible for benefits under the Federal Employee's Compensation Act because additional factual and medical evidence was needed. The Office then advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office stated that Dr. Cermak had indicated that appellant had injured his arm while trying to move a portable basketball hoop and wanted to know how this event was work related. Appellant was also advised to explain the incident of December 26, 1995 and provide the Office with the name, address and phone number of his treating physician(s).<sup>2</sup> Appellant was allotted 20 days within which to respond.

In a letter dated June 16, 1997, appellant responded to the Office's May 22, 1997 informational letter by stating:

"After delivering mail on Dec[ember] 26, 1995, I drove out of a half circle driveway and while doing so the left rear mirror on the LLV [long-life postal vehicle] got caught on the net of a portable basketball stand and knocked it over. I got out and raised the stand back up and as I turned around the stand started falling again. As I tried to stop the stand from falling I injured my right forearm. I went to Dr. Cermak for this injury and she said I sprained my forearm. This is a work-related injury since it happened while I was delivering mail."

\* \* \*

"While I was at the doctor's office I asked Dr. Cermak to check my shoulders and elbows since I have constant pain in them. Dr. Cermak claimed this was also work related, however, it has nothing to do with the accident of Dec[ember] 26, 1995. A separate form was filed concerning my shoulders and elbows."

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<sup>1</sup> There is no correspondence in the record from Dr. Layden, and no indication that appellant was ever seen or treated by a Dr. Layden.

<sup>2</sup> This letter further stated: "[the Office] may correspond directly with a physician or any other party who may be able to provide information which will help the Office make a decision on [appellant's] eligibility for benefits under the [Act]. [The Office's] efforts are intended to assist you in the collection of evidence. Please understand that is ultimately your responsibility, as the claimant, to provide or ensure the provision of all evidence needed to decide your claim, including all information requested directly by the Office. Whenever a request for information is initiated by this Office, a copy will be sent to you so you may ensure that the requested information is provided as promptly as possible."

Appellant also attached an authorization for release of information form dated June 16, 1997, to his June 16, 1997 letter of response. However, no further evidence was received by the Office.

By decision dated July 17, 1997, (approximately 30 days after the June 16, 1997 informational letter was issued by the Office) the Office rejected appellant's claim for compensation on the grounds that the evidence of record was insufficient to establish the relationship between the employment factor and the medical condition, as the record had conflicting medical evidence. The Office stated that the report of Dr. Cermak cited an incident on December 26, 1995 as the cause of appellant's condition. This incident indicated that appellant was trying to push a moveable basketball hoop back up when the hoop fell back down again. Thus, appellant tried to prevent the basketball hoop from falling all the way down when he felt a twinge in his arm and had pain and discomfort along the lateral aspect of his arm from then on. The Office also noted that on May 22 and July 1, 1997, appellant was advised of the deficiencies in his claim and afforded an opportunity to provide supported evidence.<sup>3</sup>

The Board finds that appellant has not met his burden of proof in establishing that his bilateral shoulder and elbow condition was caused by factors of his federal employment.<sup>4</sup>

An employee seeking benefits under the Federal Employees' Compensation Act<sup>5</sup> has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>6</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the

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<sup>3</sup> Although appellant submitted a copy of the July 1, 1997 informational letter to the Board with his appeal, this letter is not in the record and contains a different Office file number of A03-226086. The mention of this July 1, 1997 letter in its July 17, 1997 decision is considered to be a harmless error by the Board. However, since the claim number A03-226086, is not before the Board, it will not be addressed.

<sup>4</sup> Appellant has submitted additional evidence on appeal. The Board's jurisdiction, however, is limited to reviewing the evidence that was before the Office at the time of its final decision. The Board therefore has no jurisdiction to review any evidence submitted to the record after the Office's July 17, 1997 decision. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from having this evidence considered, pursuant to a reconsideration request before the Office, upon return of the case record to the Office.

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on this issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

There is no dispute that appellant has a bilateral shoulder and elbow condition. However, appellant has failed to submit sufficient medical evidence to establish that this medical condition is causally related to the accepted employment factors or working conditions. In the instant case, Dr. Cermak described in several medical reports appellant's job duties, including appellant's over-the-head reaching. She presented a history of appellant trying to push a movable basketball hoop back up when it had fallen down while he was performing his employment duties and the feeling a twinge in the lateral aspect of appellant's arm on December 26, 1995. Dr. Cermak then noted that appellant's bilateral shoulder and elbow condition was being caused or attributed to by appellant's over-the-head reaching at work. Dr. Cermak, however, failed to provide a rationalized medical opinion explaining either the causal relationship between appellant's condition and the alleged December 26, 1995 incident, or provide an explanation as to how and why appellant's bilateral shoulder and elbow condition was caused or attributed to appellant's over-the-head use. For example, there is no medical reports of file which explains in detail appellant's mechanism of injury.<sup>9</sup> Dr. Cermak stated that appellant's impingement is probably work related as he described doing a lot of outstretched arm maneuvers. Dr. Cermak's medical reports are speculative in nature and insufficient to establish the claim as she did not provide a medical rationalized opinion which adequately explained the causal connection between appellant's bilateral shoulder and elbow condition and with any specific workplace factor.<sup>10</sup> Dr. Cermak did not describe appellant's specific work duties in any detail or provide medical reasoning explaining how and why the over-the-head reaching, the December 26, 1995 incident, or whether there was a combination of both which caused or aggravated a specific medical condition.<sup>11</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); *see also George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>10</sup> *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

<sup>11</sup> *See George Randolph Taylor*, *supra* note 9.

The Board, however, has held that an award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>12</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence in the present case.<sup>13</sup> The Office, therefore, properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation Programs dated July 17, 1997 is affirmed.

Dated, Washington, D.C.  
August 12, 1999

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>12</sup> See *Id.*, Victor J. Woodhams, *supra* note 7.

<sup>13</sup> *Id.*